This allows element 110 to be "retained in a retracted, not exposed position during handling outside the body and while being deployed to the desired site within the body." See col. 19, lines 18-20.

Panescu does not describe an elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element directed into the tissue. See claim 1. An elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element 12, such as probe 27, passes over guide element 12 into the tissue. See the specification, page 2, lines 8-32; FIG. 1C-1D. Stylet 126 disclosed in Panescu is not a guide element directed into tissue and the catheter body 22 is not dimensioned to pass or slide along and over the stylet 126. Pansescu fails to describe a device or system for ablating tissue that includes an elongate member defining a longitudinal passage or lumen having a distal opening and a proximal opening dimensioned to pass or slide over a guide element directed into the tissue.

Accordingly, independent claim 1 is not anticipated by Panescu. Claims 2, 3, 7, 9, and 35 depend from claim 1 and are therefore also allowable over Panescu for at least the reasons described above. Independent claims 11, 14 and 17 recite features similar to those of claim 1 and are therefore also each allowable over Panescu, along with the claims dependent therefrom. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Brucker

Claims 1-20, 22-23, 25-30 and 33-34 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,500,012 to Brucker *et al.* ("Brucker"). See pages 4-5 of the Office Action. Claims 1, 11, 14, 17 and 28 are independent.

Claim 28

Independent claim 28 features a method of thermal ablation of a target volume including perforating and penetrating a living body using a guide element to establish a tract through the body to target the volume; sliding an electrode along and over the guide element directed into the body to position the electrode near the target volume. See independent claim 28.

The Office Action contends that Brucker discloses "[m]ethod steps include using a guide element (30) to establish a tract; (using embodiment in figure 12) sliding an electrode (202, 204)

including an elongate member (200) along the guide element (col. 7:16-18; ablation catheter in figure 6 is directly analogous to that in figure 12)." See page 4 of the Office Action. However, in Brucker, an ablation catheter such as a laser catheter is passed through lumen 17. See, e.g., col. 7, lines 37-40 and FIG. 10. The ablation catheter in Brucker does not slide along and over a guide element. Brucker fails to disclose perforating and penetrating a living body using a guide element to establish a tract through the body to target the volume and sliding an electrode along and over the guide element directed into the body to position the electrode near the target volume, as recited in claim 28.

Accordingly, independent claim 28 and claims that depend therefrom are not anticipated by Brucker. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 1

Independent claim 1 features a device for ablating tissue in the living body including an elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element directed into the tissue, the elongated member including an electrode disposed at a distal portion of the elongate member and configured to be energized with high frequency to ablate tissue. See claim 1.

The Examiner contends that Brucker discloses "an elongate/tubular member (figure 1; element 16) with longitudinal passage/lumen (17) dimensioned to pass a guide element (68; col. 5:47-49)." See page 4 of the Office Action. However, Brucker actually discloses a guiding/mapping ablation catheter system 10 including a tubular guiding catheter 16 having a central lumen 17, disposed within which is an ablation catheter such as a laser catheter. See col. 2, lines 36-42, 54-56.

Brucker does not describe an elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element directed into the tissue. See claim 1. An elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element 12, such as probe 27, passes over guide element 12 into the tissue. See the specification, page 2, lines 8-32; FIG. 1C-1D.

The laser, or ablation, catheter 50 disclosed in Brucker is not a guide element directed into tissue as recited in claim 1 of the present application, and the guiding catheter 16 is not

dimensioned to pass or slide along and over the ablation catheter 50. Rather, "[t]he ablation catheter of FIG. 6 is then inserted into the guiding/mapping catheter 10 .... The ablation catheter 50 is flushed with saline to keep blood and other biological tissue out of the field of view of the ablation catheter 50. The ablation catheter is then moved forward until it comes in contact or near contact with the endocardial surface." See col. 7, lines 16-23.

Although the Examiner indicates that element 68 disclosed in Brucker is a "guide element" as recited in claim 1, element 68 is actually "laser catheter plastic tubing sheath 68," or simply a sheath encasing a laser-type ablation catheter 50 disposed within lumen 17 of tubular guiding catheter 16. See col. 5, lines 47-49. Indeed, while discussing Brucker, the Examiner alternatively equates the guide element recited in the present application to this laser catheter plastic tubing sheath 68 and to the guiding/mapping catheter deflecting sheath 30 with respect to the rejection of claim 28, discussed above. While Brucker does disclose moving an ablation catheter inside a lumen 17 of a tubular guiding catheter 16 (see, e.g., col. 3, lines 42-47), Brucker fails to disclose "an elongate member defining a longitudinal passage having a distal opening and a proximal opening dimensioned to pass over a guide element directed into the tissue," as recited in claim 1.

Applicant respectfully submits, therefore, that claim 1 is not anticipated by Brucker. Independent claims 11, 14 and 17 recite similar limitations to claim 1 and are therefore believed to be allowable over Brucker for at least the reasons described above. Claims dependent from independent claims 1, 11, 14, and 17 are also believed to be allowable over Brucker for at least the reasons set forth above. Applicant respectfully requests that this rejection be withdrawn.

Rejections under 35 U.S.C. § 103

Brucker in view of Panescu

Claims 21, 24 and 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Brucker in view of Panescu. See page 6 of the Office Action. Claims 21 and 24 depend from independent claim 17. Claim 31 depends from independent claim 28.

Claim 31

As noted above, independent claim 28 features a method of thermal ablation of a target volume comprising perforating and penetrating a living body using a guide element to establish a tract through the body to target the volume; sliding an electrode along and over the guide

element directed into the body to position the electrode near the target volume. Claim 31, dependent from claim 28, additionally recites the additional feature of deploying an anchor from the guide wire to anchor the guide wire in the tract.

As described above, Brucker and Panescu fail to disclose perforating and penetrating a living body using a guide element to establish a tract through the body to target the volume and sliding an electrode along and over the guide element directed into the body to position the electrode near the target volume (see claim 28). Neither Brucker nor Panescu suggest or provide any motivation to do so. Therefore, no combination of Panescu and Brucker yields the invention recited in dependent claim 31. Applicant respectfully submits that claim 31 is allowable over Panescu in view of Brucker. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 21 and 24

As noted above, both Panescu and Brucker fail to disclose an elongate member defining a longitudinal channel having a distal opening and a proximal opening, the elongate member being dimensioned to slide along and over the guide element directed into the tissue (see claim 17). Neither Brucker nor Panescu suggest or provide any motivation to do so. Accordingly, dependent claims 21 and 24 are also allowable over Panescu and Brucker. Reconsideration and withdrawal of this rejection is respectfully solicited.

Brucker in view of Nishtala

Claim 32 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Brucker in view of U.S. Patent No. 6,616,678 to Nishtala *et al.* ("Nishtala"). See page 6 of the Office Action. Claim 32 depends from independent claim 28.

The Office Action states that "Nishtala discloses a dilating element for enlargening [sic] a tract created in an analogous protocol to the Applicant's and Brucker's." Page 6 of the Office Action.

However, as described above, Brucker does not describe or suggest a method for thermal ablation of a target volume including "perforating and penetrating a living body using a guide element to establish a tract through the body to the target volume and sliding an electrode along and over the guide element directed into the body to position the electrode near the target volume," as recited in independent claim 28. Nishtala also fails to disclose these limitations.

Neither reference provides any motivation to slide an electrode along and over a guide element directed into the body. Thus, independent claim 28, and claim 32 that depends therefrom, are patentable over the combination of Brucker with Nishtala. Applicant respectfully requests reconsideration and withdrawal of this rejection.

CONCLUSION

Applicant respectfully requests allowance of the pending claims. Enclosed is a petition for a one-month extension of time along with a check for the required fee. Please apply any other charges or credits to deposit account 19-4293.

Respectfully submitted,

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